1946. **K** Legal **DEPARTMENT**

K A **BRANCH**

File No. O. Laq./46.

Subject:—

P 1 38 / 1

Opinions under the Land Acquisition Act, 1894.

CONTENTS.

Legal Department File No. O.Leg/ 1946

Sr. No.	Compilation No.	Subject	Pages.
	O.Leg/ 1946	Opinions under the Land Acquisition Act, 1894.	
1	O.N.xxx 25-1-1946	In whom the ownership of drainage works carried out under agreement entered into by several companies in the drainage catchment areas in which the sugar company's irrigation is carried out vests in Govt. or Sugar Cos.	~~5~~ 1-3
2	O.N.1631 27-2-1946	Whether there would be any legal objection if the plaintiff's land is now acquired because the period of 6 months allowed under the H.Ct. decision in F.A.No. 338 of 1942 has already passed.	~~7~~ 5
3	O.N.1818 -3-46	Whether it is quite necessary to grant a Sanad to the Society as originally agreed between Govt. and the Society.--	~~9-11~~ 7-9
	O.N.1897 7-3-46	Whether the party has any legal claim to the payment of Rs. 4184/- and /or interest and if so interest for what period--settlement with Mr. Z.B. J.D.Kumwalla quarry lands at Khandala	~~13-14~~ 11-12
7	xxx.xxx 20-5-46	Person interested in any land which has been notified under sec. 4(1) of the Act must lodge his objection within 30 days after the issue of the notification	~~15-16~~ 13-14
6	O.N.4070 30-5-46	Sec.33(1) -- The maximum period of the temporary occupation of land under.	~~17~~ 15
7	O.N.6073 5-9-46	Feasibility or otherwise of requisitioning or acquiring of the liquor house building at Jalgaon for the purpose of the Warehouse after the expiration of the lease -----	~~19~~ 17
8	O.N.635-P -10-46	Whether there would be any legal objection to the notification under sec.6 being issued prior to the publication of the agreement which is usually published simultaneously with the notification under sec. 6	~~21-25~~ 19
9	O.N.7823 9-11-46	Application for acquisition of the land by the Director Vicar General of the St. Anthony's Educational Society Honavar. --	~~27~~ 21-23
10	O.N.8121 18-11-46	Acquisition of land for the District bunglow at Pimpalgaon-Baswant. -----	~~29-32~~ 25-28

PSM.10/5
SC

877 dated 8-10-1945.

Submitted with reference to P.W.D. office note dated 18-9-1945 (pages 23-25 ante).

2. The R.L.A. is requested by the P.W.D. to advise (p. 25) as to in whom the ownership of drainage works carried out under agreement entered into by several companies in the drainage catchment areas in which the sugar company's irrigation is carried on, vests - Govt. or the sugar companies.

PSM. 11/5
4C

Office of the R.L.A.

In its office note at page 30 ante P.W.D. states:-

"It may also be stated that the rate of Rs. 15/- as cost of drainage works per acre included the cost of acquisition of land for the purpose of drainage. The procedure now in vogue is to recover from the companies the cost of land acquisition along with the percentage charges for the preparation of the project and supervision and also for the capatalisation of abatement of land revenue".

It is clear from the aforesaid statement that when the companies pay for the land and the construction of drainage works the ownership thereof should ordinarily vest in the companies. There is nothing in the old or new agreements to counter it! Consequently the assumption hitherto made by P.W.D. that the drainage works vest in Government does not appear to be correct.

Id/- R.T.K.

For Remembrancer of Legal Affairs.

U.R. to P.W.D., No. 687, dated the 25th January 1946.

PSM. 11/5 4C

5 7

Office of the R.L.A.

Under the revised injunction order passed by the High Court there is no legal objection to Government acquiring the land notwithstanding the expiry of six months.

Id/- P?N.M.

26-2-46

Remembrancer of Legal Affai

U.R. to P.W.D.,No. 1631, dated the 27th February 1946.

PSM. 11/5
4C

L.D.,R.I.,No.539, dated 19-1-46

Submitted.

Under the Land Acquisition Act, 1894, Government acquired certain land at Yeravda on behalf of the Parsee Public School Society for the purposes of a Public School. Under section 41 of the said Act, Govt. entered into two agreements with the said Society in respect of the said land. The first agreement is dated 18th November 1931 and the second agreement is dated 22nd August 1940. The Society was put in possession of the said land but no Sanad has yet been executed vesting the said land in the Society. The Society has dropped the idea of establishing a Public School on the acquired land and proposeds to relinquish the said land in favour of Government. The Government is willing to refund to the Society the money paid in respect or the said land upon certain conditions. After the said land is resumed, Government proposes to sell the same to Sir Cawasjee Jehangir.

2. R.L.A. is now requested to advise whether it is still necessary to grant a/sanad to the Society as originally agreed between Government and Society. (Vide R.D. note dated 17-1-46 at p. 79 ante).

X X X

Id/- H.P.R.

20-2

Id/- R.T.K.

21-2

R.L.A.

I agree

Id/- P.N.M.

1-3-46

R.N.M.

PSM. 11/5
4C

The view taken by R.D. that it is not necessary for the Collector to execute a sanad in favour of the Society is correct. But as pointed out by the Advocate General in his opinion dated 19-4-1942 what is necessary is a deed of relinquishment by the Society itself.

Id/- P.N.M.
4-3-46
Remembrancer of Legal Affairs.

U.R. to R.D.,No.,1818, dated the 5th March 1946.

PSM. 11/5
4C

Office of the R.L.A.

The legal effect of G.R.(Development Department) No. SA-1250 dated 19-8-1925 is an agreement for the sale of land measuring 3 acres and 1 guntha to Mr. Rumwalla for a sum of Rs.4184-14-0. The sale consideration of Rs. 4184-14-0 was deducted by Government from the conpensation payable to Mr. Rumwalla for theacquired property but it appears that no conveyance was passed nor possession delivered by Government Mr. Rumwalla had two remedies open to him

(1) to ask for specific performanceof the agreement

(2) to claim a charge on the property and to enforce refund of the consideration with interest (see section 54 and 55(6)(b) of the Transfer of Property Act.).

Mr. Rumwala did not care to enforce his claim in either way nor has his son taken any steps for the purpose. His claim for refund of the purchase money with interest by way of a charge on the property is now time-barred. (See section 100" of the Transfer of Property Act read with Article 132 of the Limitation Act). Under Article 113 or the Limitation Act a suit for specific performance of a contract is required to be instituted within three years from hedate fixed for the performance or if no such date is fixed when the plaintiff has notice that performance is refused. No date for the performance was fixed in the present case. "once there is an agreement to sell immoveable property and the vendee has done his part of the contract by paying the purchase money, the vendor is bound to do everything necessary in order to complete the title of the vendee and where section 54 of the Transrer of Property Act applies, by a registered deed of Conveyance". (See 33 Ind. Cas. 761 Mya Bwin Vs. Mameg Kya Zan). Government did not offer to complete the sale nor did it refuse so to do at any time after the agreement of sale. Consequently the claim if made by Mr. Rumwalla's son for specific performance of the agreement may succed. That apart, Mr. Rumwalla has an equitable claim either for refund of the consideration or for possession of the land. In the circumstance the course proposed by Secretary, M.R. D. to make an ex gratia payment

is reasonable and fair. It does not appear quite necessary that Mr. Rumwalla's son should execute a deed transferring his right, title and interest if any, in the land and agreeing to reimburse Government as regards the claims of other parties, if any, since the land after acquisition vested absolutely in Government free from all encumbrances and the agreement of sale created no valid interest therein. There is however no harm in taking a deed from Mr. Rumwalla's son as proposed.

Id/- P.N.M.
6-3-46

Remembrancer of Legal Affairs.

U.R. to R.D., No. 1897, dated the 7th March 1946.

Office of the R.L.A.

According to section 5A(1) of the Land Acquisition Act, 1894, any person interested in anyland which has been notified under section 4(1) of the Act must lodge his objection within 30 days after the issue of the notification. In view of the provisions of section 5A(2) of the Act such an objection has to be made to the Collector in writing.

In this case, the Collector of Ahmedabad gave a notice under section 4(1) of the Act, dated 15-9-1944 to Rao Saheb V.T.Shah whose S.No. 63/2 had been notified for acquisition for the purposes of the Ahmedabad Electricity Co., Ltd., According to this notice, Rao Saheb V.T.Shah had to submit his objections to the proposed acquisition of his S.No.63/2 on or before 11-2-1944. He did not, however, do so, and on 8-12-1944 sent an application to the Collector requesting him to give him more time for submitting his objections. It appears that this application was granted and he was informed that he could submit his objections by 3-1-1945. But he did not avail himself of this opportunity. Apparently the notice extending the time to 3-1-1945 had been duly posted to Rao Saheb V.T.Shah, and must be presumed to have reached him in time. In the circumstances it can hardly be maintained that he was not given proper opportunity for being heard in connection with the proposed acquisition of his S.No.63/2.

The notice under section 9 of the Act, it appears, was issued to Rao Saheb V.T.Shah on 11-9-1945. According to this notice Rao Saheb V.T.Shah was to appear before the officer concerned and to state the nature of his interest in the land proposed to be acquired viz. S.No.63/2 and the amount and particulars of his claim to compensation for such interest. But in this notice, it is said, no date was fixed for his doing so. This fact appears to have been admitted by the AdditionalSpecial

Land Acquisition Officer, Ahmedabad.

As Rao Saheb V.T.Shah was not satisfied with this defective notice, he could apply to the Collector under section 18 of the Act to make a reference to the Court, and press his claim to compensation there under section 25 of the Act, inspite of his failure to comply with the provisions of section 9 of the Act.

As the award in respect of Rao Saheb V.T.Shah's S.No.63/2 has according to the report of the Additional Special Land Acquisition Officer, Ahmedabad, been kept pending till further orders there is apparently no objection to issuing the order as proposed in para. 2 of the note of the Secretary, R.D.

Id/- P.N.M.
18-5-46

Remembrancer of Legal Affairs.

R. to R.D.,No., 3776 dated the 20th May 1946.

PSM. 11/52
4C

Office of the R.L.A.

The maximum period of the temporary occupation of land under section 33(1) of the land Acquisition Act, 1894, is limited to three years on the expiration of which the land must be restored to the persons interested therein under section 36(1). Consequently no extension of the period of the temporary occupation of the steam station site in the present case by oneyear as proposed by P.W.D. is legally feasible. The site wil have therefore to be first restored to the owners and then it may again be temporarily acquired under section 35(1) if the owners are unwilling to lease it. The view taken by R.D. is correct.

Id/- P.N.M.
30-5-46

Remembrancer of Legal Affairs.

U.R. to P.W.D.,No. 4070, dated the 30th May 1946.

PSM. 11/5
4C

Office of the R.L.A.

Requisitioning of the leased building for the purpose of using it as a Government liquor warehouse would not be legally justifiable under rule 75A of the Defence of India Rules unless the maintenance of liquor supplies is considered essential to the life of the community. It would however be feasible to acquire the building under the Land Acquisition Act, 1894 as acquisition for the purpose of a Government warehouse can be deemed to be for a "public purpose".

Id/- P.N.M.
2-9-46

Remembrancer of Legal Affairs.

U.R. to R.D.,No. 6073, dated the 5th September 1946.

PSM. 11/5
4C

Office of the R.L.A.

The view expressed at 'A' of the Revenue Department office note at pages 69-70 ante is not correct. Not notification under section 6 of the Land Acquisition Act, 1894 can be issued unless an agreement is taken from the Company (See section 39 of the Land Acquisition Act, 1894)

Id/- P.N.M.
4-10-46

Remembrancer of Legal Affairs.

PSM. 11-5
4C

U.O.R. to R.D. No. 635-P, dated the 7th Oct, 1946

2\ 23-25

R.I.No. 8850, date:- 11-10-1

The St. Anthony's Educational Society being a Society registered under the Societies Registration Act, 1860, will fall within the meaning of the term "Company" defined in cl.(e) of section 3 of the Land Acquisition Act, 1894.

The Collector of Kanara, however, states that "there is no evidence to show that this Committee(the hospital Committee) has been constituted by the St. Anthony's Educational Society for the above purpose(for construction of a hospital at Honawar), nor is there any proof to show that the Society has resolved to undertake the hospital scheme by passing resolution. In the circumstances, I think that St. Anthony's Educational Society has no legal connection with the Hospital committee or the affairs of the hospital for which the acquisition of land is applied for". In view of this report of the Collector, it is manifest that the land proposed to be acquired is not required by the St. Anthony's Educational Society (a Society registered ~~by them~~ under the Societies Registration Act, 1860) but is presumably required by a Hospital Committee, a body quite distinct from the said Society. and that being so, the provision of Chapter VII of the Land Acquisition Act, 1894, cannot be put into force.

Reply may be:-

"Seen and returned. The view ~~taken~~ expressed by the Under Secy., R.D., in his note dated 8-10-46 at p.9 is correct.

Id/- E.P.B.
4-11

D.S.

I agree. Reply may as proposed by S.A.S.

Id/- A.R.Khan
4-11-46

R.L.A.

I concur

Id/- P.H.M.
7-11-46

PSM..11/5

Office of the R.L.A.

Seen and returned. The view expressed by the Under Secdetaryl Revenue Department, in his note dated the 8th October 1946 at page 9 is correct.

Id/- P.N.M.
8-11-46

Remembrancer of Legal Affairs.

U.R. to R.D.,No.,7823, dated the 9th November 1946.

PSM. 11/5
4C

It appears that the District Bungalow at Pimpalgaon-Baswant was constructed in a part of S.No. 110 measuring 1 Acre and 13 Gunthas in or about 1870. As no record regarding its acquisition or purchase was traceable, it was decided to acquire it and land acquisition proceedings were accordingly started in the year 1940, and the relevant notifications under sections 4 and 6 of the Land Acquisition Act, 1894, were issued for acquisition of 1 Acre and 2 Gunthas of land from this S.No.

2. In the course of the land acquisition proceedings the land acquisition officer made a reference to the Collector of Nasik, seeking his instructions on certain points. Thereupon the Collector asked the Prant Officer concerned to ascertain and report whether the matter could be decided by private negotiation, and, if so, on what terms. The Prant Officer consulted the persons whose names apneared as owners in the Record of Rights. They expressed their willingness to allow the District Bungalow to stand on the land in question, provided they were permitted to enjoy the usufruct of the trees standing in the compound and were paid Rs. 3000/- as compensation for the land .

3. The Prant Officer then recommended to the Collector that if it was deemed necessary to acquire the land on behalf of Government it might be purchased by private negotiation on payment of Rs. 3000/- to the owners of the land in full satisfaction of their claim. The Collector concurred in this view and recommended to the Commissioner, C.D., that the land should be purchased for a lump sum Rs. of Rs. 3000/- and that the land acquisition proceedings might be dropped. Thereafter the Commissioner, C.D., informed the Collector that if the Land Acquisition Officer considered that the amount of Rs. 3000/- was reasonable he should frame his award accordingly.

4 From the report of the Mamlatdar of Niphad dated 21st July 1946, it appears that Mr. Vishnu Govind Kulkarni who had a half share in the land in question according to the entry in the Record of Right had mortgaged his share to the Co-operative Society, Pimpalgaon-Baswant, without possession as shown in the extract from V.F. VII/XII for the years 1940 and 1946.

5. In his endorsement No. L.A.Q. 636, dated 14th August 1946, forwarding a copy of the letter from the D.D.C., Niphad Prant, the Collector of Nasik observed:-

"Government can now claim the land by adverse possession. The question of the compensation for the value of the rights of the trees will have to be considered . The valuation reported by the Prant Officer may be accepted. In case this is to be done the Land Acquisition proceedings will have to be completed."

6. In his note dated 2nd October 1946, the Under Secretary, R.D.. observed:-

"It is stated that the land has been mortgaged to a co-operative Society without possession. This encumbrance requires to be extinguished otherwise Government's title to the land by adverse possession may not be clear and a civil suit may be filed against Government. The L.A.Q. proceedings already started may be allowed to proceed and be completed, and the Collector may be instructed that compensation payable to the holder is limited to his rights to the usufruct of the trees; probably the mortgagee without possession will have no rights against Government.

7. The point for the consideration of the R.L.A. is whether the view expressed by the Under Secretary, R.D., is correct.

8. By adverse possession ~~x~~ is meant a possession which is hostile, under a claim or colour or title, actual, open, uninterrupted, notorious, exclusive and continuous,. It is no doubt true that in the present case the land on which the District Bungalow stands has been in the possession of Government for more than 12 years and may be Government could claim the land by right of adverse possession. But it appears that in the Record of Rights the land still stands in the name of the original owners, that there is evidence to show that they had been paying the assessment ~~x~~till 10 years ago and that they are still in enjoyment of the usufruct of the trees in the land. The se ~~xxxxx~~ three factors somewhat militate against Government's claim to the land by right of adverse possession and it may well be argued that Government's possession as such was not openly hostile to the owners. Unless the right to the land by adverse possession established by clear and unrebuttable evidence in a court of law it would hardly be proper for Government to proceed on the assumption that they are the absolute ~~x~~owners of the land in question and that therefore acquisition proceedings are not necessary. Moreover, it would be a ~~x~~question of conscience and equity whether or not Government, in the absence of evidence of their clear and undisputed title, should retain possession of the land on the somewhat dubious claim of adverse possession without paying adequate compensation to the original owners. In the circumstances it would be advisable for Government to proceed with the acquisition of the land on payment of adequate compensation to the owners or

in the alternative to purchase the land by private negotiation.

9. Vishnu Govind Kulkarni, whose name appears in the Record of Rights as owner of a half share in the land is said to have mortgaged his share to the Co-operative Credit Society, Pimpalgaon-Baswant. Clause (a) of section 65 of the Transfer of Property Act, 1882, provides that in the absence of a contract to the contrary, the mortgagor shall be deemed to contract with the mortgagee that the interest which the mortgagor professes to transfer to the mortgagee subsists, and that the mortgagor has power to transfer the same. The only interest in the property which Vishnu Govind Kulkarni could mortgage to the co-operative society was in respect of his half share in the land. Therefore the encumbrance of the mortgagee over the land will have to be extinguished in this case.

Id/- P.N.M.
16-11-46
Remembrancer of Legal Affairs.

U.R. to R.D.,No., 6121, dated the 18th November 1946.

PSM. 11/5
4C